IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2195 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAM NARAYAN SEVRA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2195 of 2001

MR PJ KANABAR for Petitioner No. 1

MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/07/2001

ORAL JUDGEMENT

#. Heard Mr.P.J.Kanabar, learned advocate appearing on behalf of the petitioner and Mr.H. L.Jani, learned AGP for respondents - State. In the present petition, the petitioner has challenged the order of detention dated 23rd February, 2001 under Article 226 of the Constitution

of India. The detention order has been passed by the District Magistrate, Junagadh District under Section 3[2] of the PASA Act and the grounds of detention are communicated and supplied to the petitioner under Section 8[1] of the PBM Act. The present petitioner has been detained in District Jail Palanpur as class II detenu.

#. Learned advocate Mr.P.J.Kanabar has raised various contentions challenging the detention order but according to him, one contention is enough to vitiate the order of detention. He submitted that at the time of checking, stock register has been seized by the concerned authority but no xerox of the said stock register has been supplied to the present petitioner but merely an abstract has been supplied from the stock register to the petitioner as per pg.89 to 93 and therefore, this is nothing but insufficient compliance for making effective representation by the petitioner under Article 22[5] of the Constitution of India. He also relied upon three decisions of the Apex Court, three decisions of the Apex Court, which are referred as under :-

[1] SMT ICHHUDEVI VS UNION OF INDIA AIR 1981 S.C. 431
[2] SMT SHALINIDEVI MEHTA ETC. VS. UNION OF INDIA, AIR 1980 SC 1983
[3] SOPHIA GULAM MOHM. STATE OF MAHARASHTRA, 1999 SCC [6] pg.593.

#. Learned AGP Mr.H.L.Jani appearing on behalf of the respondents has submitted that the detaining authority District Magistrate, Junagadh has filed a detailed affidavit in reply. Mr.Jani, learned AGP has, relying upon the said affidavit in reply filed by the detaining authority submitted that supply of an abstract can be said to be sufficient compliance on the part of the detaining authority as the said abstract is the copied from the original documents and therefore there was no need to supply xerox copy of the entire stock registers / documents and the petitioner would have made an effective representation after considering the abstract which was supplied to him by the detaining authority and therefore, according to him, the order of detention is legal and valid and the same has been passed taking into account all the relevant materials on record and hence, the detention order has been rightly passed by the detaining authority. Therefore, according to him, no interference of this Court is required in the matter.

#. Learned AGP Mr.H.L.Jani has raised contention that the petitioner has not raised this contention in this

petition as to non supply of the xerox copy of the stock register to the petitioner and therefore, now this contention can not be raised by the petitioner at this stage before this Court and it is further submitted that since such contention has not been raised, this Court cannot consider the same at this stage. However, Mr.Kanabar has submitted that the petitioner can challenge the detention order even raising contention during the course of arguments and it is duty of the detaining authority to justify the detention order because the burden lies upon the detaining authority to satisfy this Court that the detention order has been rightly passed by the detaining authority. Mr.Kanabar has also relied upon decisions of the Apex Court in following cases, of which, important observations are quoted as under :-

"5. This practice marks a departure from that obtaining in England where observance of the strict rules of pleading is insisted upon even in case of an application for a writ of habeas corpus, but it has been adopted by this Court in view of the peculiar socio-economic conditions prevailing in the country. Where large masses of people are poor, illiterate and ignorant and access to the courts is not easy on account of lack of financial resources, it would be most unreasonable to insist that the petitioner should set out clearly and specifically the grounds on which he challenges the order of detention and make out a prima facie case in support of those grounds before a rule is issued or to hold that the detaining authority should not be liable to do anything more than just meet the specific grounds of challenge put forward by the petitioner in the petition. The burden of showing that the detention is in accordance with the procedure established by law has always been placed by this Court on the detaining authority because Article 21 of the Constitution provides in clear and explicit terms that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law. This constitutional right of life and personal liberty is placed on such a high pedestal by this Court that it has always insisted that whenever there is any deprivation of life or personal liberty, the authority responsible for such deprivation must satisfy the court that it has acted in accordance with the law. This is an area where the court has been most strict and

scrupulous in ensuring observance with the requirements of the law, and even where a requirement of the law is breached in the slightest measure, the court has not hesitated to strike down the order of detention or to direct the release of the detenue even though the detention may have been valid till the breach occurred. The court has always regarded personal liberty as the most precious possession of mankind and refused to tolerate illegal detention, regardless of the social cost involved in the release of a possible renegade."

In case a very case of ICHHUDEVI CHORARIA VS. UNION OF INDIA in case of ICHHUDEVI CHORARIA VS. UNION OF INDIA reported in AIR 1980 SC p.1963, some other important observations are necessary to quote here, which runs as under :-

The detenu was taken under detention on 4th June, 1980 by an order of detention dated 27th May, 1980. The order of detention recited that with a view to preventing him from smuggling goods and abetting the smuggling of goods it was necessary to detain him. After detention he was also served on the same day, the grounds of detention. The grounds of detention referred to several documents and statements including two tape recorded conversations. The detenu addressed a letter dated 6th June, 1980 asking for all statements, documents and material to enable him to make an effective representation against his detention. The detenu also sent a representation dated 9th June, 1980 to the Deputy Secretary once again requesting him to supply immediately the documents etc. relied upon in the grounds of detention and to furnish the transcripts of the tapes as also to produce the original tapes, so that he could prove that the voice recorded on the tapes was not his. The detenu addressed another representation dated 26th June, 1980 to the Chairman of the Advisory Board, the Central Government and the Deputy Secretary to the State Government praying for revocation of the order of detention, wherein he pointed out that by his letters dated 5th, 9th and 14th June, 1980, he had requested for the tapes to be supplied to enable him to prove that the voice recorded on the tapes was not his and that this request had not been complied with and in the circumstances the hearing of the case before the Advisory Board

would be futile. Meanwhile the Investigating Officer of the Customs Department was deputed to the Central Prison alongwith the tapes, and the tapes were played in the presence of the detenu and the Deputy Superintendent of the Central Prison on 8th July, 1980. The representations of the detenu were examined by the government, who by their letter dated 15th July, 1980 rejected the representations and declined to revoke the order of detention.

In the writ petition under Article 32 of the Constitution filed by the mother of the detenu it was contended: (1) that the detaining authority did not serve on the detenu alongwith the grounds of detention, copies of the statements, documents and tapes referred to in the grounds of detention and it could not, therefore, be said that the grounds of detention were duly served on the detenu as required by sub-section (3) of section 3 of the COFEPOSA Act and clause (5) of Article 22 of the Constitution, and (2) that the detaining authority did not supply copies of such statements, documents and materials until 11th July, 1980 and on that day also, what were supplied were merely copies of the statements and documents and not copies of the tapes which were supplied only on 20th July, 1980 and that this delay was wholly unjustified and the detenu was thus denied the earliest opportunity of making an effective representation and consequently the continued detention of the detenu was illegal and void.

Reliance is also placed one another decision in case of SMT SHALINI SONI ETC. VS. UNION OF INDIA reported in AIR 1981 SC p.431.

(1) The representation by the detenu under the COFEPOSA has not to be made in any prescribed form. There is no formula nor any magical incantation like "open seasame" to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or a reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution. [965DE]

In the instant case the communication dated July 27, 1980 by the counsel for the detenu in W.P. 4344 of 1980 was a representation which was in law required to be considered. The said representation admittedly not having been considered the detenu was entitled to be set at liberty. [965H-966A, C]

(2)The obligation imposed on the detaining authority, by Article 22(5) of the Constitution, to afford to the detenu the earliest opportunity of making a representation, carries with it the imperative implication that the representation shall be considered at the earliest opportunity. Since all the constitutional protection that a detenu can claim is the little that is afforded by the procedural safeguards prescribed by Article 22(5) read with Article 19, the Courts have a duty to rigidly insist that preventive detention procedures be fair and strictly observed. A breach of the procedural imperative must lead to the release of the detenu. [966B]

(3)Article 22(5) has two facets: (i) communication of the grounds on which the order of detention has been made; (ii) opportunity of making a representation against the order of detention. Communication of the grounds presupposes the formulation of the grounds and formulation of the grounds requires and ensures the application of the mind of the detaining authority to the facts and materials before it, that is to say, to pertinent and proximate matters in regard to each individual case and excludes the elements of arbitrariness and automatism. [966G]

(4) It is an unwritten rule of the law, constitutional and administrative, what whenever a decision making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote. Where there is further an express statutory obligation to communicate not merely the decision but the grounds on which the decision is founded, it is a necessary corollary that the grounds communicated, that is, the grounds so made known, should be seen to pertain to pertinent and

proximate matters and should comprise all the constituent facts and materials that went in to make up the mind of the statutory functionary and not merely the inferential conclusions. Now, the decision to detain a person depends on subjective satisfaction of the detaining authority. The Constitution and the statute cast a duty on the detaining authority to communicate the grounds of detaining to the detenu. The grounds communicated must reveal the whole of the factual material considered by the detaining authority and not merely the inferences of fact arrived at. The same result would follow if the matter is looked at from the point of view of the second facet of Art. 22(5), namely the opportunity to make a representation against the order of detention. [966H-D]

(5)The "grounds" under Article 22(5) of the Constitution do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The "grounds" must be self-sufficient and self-explanatory. Copies of documents to which reference is made in the "grounds" must be supplied to the detenu as part of the "grounds". [1967E-F]

Smt. Icchu Devi Choraria v. Union of India & Ors., [1981] 1 S.C.R. p. 642, explained and followed.

The third decision relied upon is in case of SOPHIA GULAM MOHD. BHAM VS. STATE OF MAHARASHTRA reported in 1999 [6] SCC p.593. The relevant observations in para-11 are quoted as under :-

"11. Now, an effective representation can be made against the order of detention only when copies of the material documents which were considered and relied upon by the detaining authority in forming his opinion that the detention of Bham Faisal Gulam Mahammed was necessary, were supplied to him. It is only when he has looked into those documents, read and understood their contents that it can be said that the detenu can make an effective representation to the detaining authority, State or Central Government, as laid down in Article 22[5] of the Constitution which provides as under :

"22.[5] When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order."

#. In light of above observations made by the apex court and considering the facts and circumstances of the present case that documents which were supplied to the petitioner were not all the documents seized and considered by the detaining authority while passing the detention order. It is also noted that stock register were seized by the concerned authority but only abstract has been supplied to the petitioner instead of supplying xerox copies of all stock register and therefore considering, para-9 of the grounds of detention, the detaining authority has not only relied upon the said document but the same were considered by the detaining authority while passing the detention order that on the basis of the stock register, transactions were found to be illegal. Therefore, these being the vital documents, were required to be supplied in xerox of the original form and therefore non supply of such documents and mere supplying the abstract is not enough compliance which could really enable the petitioner to make an effective representation. Therefore, non supply of the all the documents to the petitioner, has adversely affected the right of the petitioner from making an effective representation and thereby violated Article 22[5] of the Constitution of India and therefore, according to my opinion, the order of detention is required to be set aside.

#. In the result, the preset petition is thus allowed. The order of detention dated 23rd February, 2001 passed by the District Magistrate, Junagadh is hereby quashed and set aside. The present petitioner - detenu Ram Naran Sevra who has been detained at Palanpur District Jail is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. The office is directed to send the writ of this order immediately to the Jail Superintendent, District Jail Palanpur.

Date : 12-7-2001 [H.K.Rathod, J.]

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